

**34-38-10 A cause of action does not arise against employer unless inaccurate test result --
Presumption and limitation of damages in claim against employer.**

- (1) A cause of action may not arise in favor of a person against an employer who establishes a program of drug or alcohol testing in accordance with this chapter, and who takes an action under Section 34-38-8, unless the employer takes the action on the basis of an inaccurate test result.
- (2) If a person bringing a claim, including a claim under Section 34-38-11, alleges that an employer's action is based on an inaccurate test result:
 - (a) there is a rebuttable presumption that the test result is valid if the employer complies with Section 34-38-6; and
 - (b) the employer is not liable for monetary damages if the employer's reliance on an inaccurate test result is reasonable and in good faith.
- (3)
 - (a) There is a rebuttable presumption that the employer complies with Section 34-38-6 if as part of the employer's drug and alcohol testing program a licensed physician who is trained in the interpretation of drug and alcohol test results:
 - (i) provides medical assessment of a result that indicates a failed test;
 - (ii) requests re-analysis of a test result if necessary; and
 - (iii) makes a determination whether or not alcohol or other drug use has occurred.
 - (b) A court may find that an employer complies with Section 34-38-6 notwithstanding that the employer's drug and alcohol testing program does not include an action described in Subsection (3)(a).

Amended by Chapter 284, 2010 General Session